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Attorneys for Plaintiff JENS ERIK SORENSEN,
as Trustee of SORENSEN RESEARCH AND
DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of	)	Case No. 08cv00071 BTM CAB
SORENSEN RESEARCH AND)	
DEVELOPMENT TRUST,	)	DECLARATION OF MELODY A.
	)	KRAMER IN SUPPORT OF
Plaintiff	)	PLAINTIFF'S MOTION FOR
v.	)	EXCEPTION TO STAY TO
	)	PRESERVE EVIDENCE
SENCO PRODUCTS, INC., an Ohio)	
corporation; and DOES 1 – 100,	)	Date: August 8, 2008
	)	Time: 11:00 a.m.
Defendants.	)	Courtroom 15 – 5 th Floor
	)	The Hon. Barry T. Moskowitz
and related counterclaims.)	
	)	<i>Oral Argument Has Been Respectfully</i>
	)	<i>Requested by Plaintiff</i>
)	
)	
)	

1 I, MELODY A. KRAMER, declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I
3 have personal knowledge of the facts contained within the following paragraphs, and
4 could and would competently testify thereto if called as a witness in a court of law.

5 2. At all times relevant herein I have been an attorney for Sorensen
6 Research and Development Trust ("SRDT"), Plaintiff in the above-captioned matter.

7 3. This Declaration is being submitted in conjunction with Plaintiff's
8 Motion for Exception to Stay for Preservation of Evidence.

9 4. I have requested an exception for stay for preservation of the evidence
10 outlined in the accompanying motion by letters to Defendants' counsel, but
11 Defendants have failed to agree.

12 5. Plaintiff is requesting the items of discovery that are the subject of this
13 motion because we believe these items of discovery are necessary and that delay
14 until completion of the '184 patent reexamination creates the risk of loss of evidence.

15 6. Infringement notices and other communications regarding these Senco
16 products always end up in the same place – Defendant Techtronic Industries North
17 America and its group of interrelated companies which include Defendant One
18 World Technologies (defendant in the related *Sorensen v. Emerson Electric* and
19 *Sorensen v. Ryobi* cases, Case Nos. 08cv00060 and 08cv00070, respectively).

20 7. Upon information and belief, the Senco Accused Products are
21 manufactured through the same channels as the Ridgid® products that are the subject
22 of the *Sorensen v. Emerson* case. As to those products, Plaintiff has received
23 contradictory information pre-litigation from the Defendants regarding where and
24 how the Accused Products are manufactured, whether domestically or offshore by
25 companies other than the named Defendants, and companies which may or may not
26 even have common ownership to the Defendants. See the concurrently filed "Motion
27 for Exception to Stay for Preservation of Evidence" filed in the *Emerson* case.

28 8. Letters from Defendants' counsel feign inability to even understand

1 Plaintiff's request for preservation of molds and design and technical documents.
2 True and correct copies of the relevant letters are attached hereto as Exhibit A.

3 SWORN TO under penalty of perjury of the laws of the State of California
4 and the United States, this 9th day of June, 2008.

5
6 /s/ Melody A. Kramer

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Melody A. Kramer, Esq.
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VIA FAX and FEDERAL EXPRESS

May 6, 2008

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Orlando F. Cabanday
HENNELLY & GROSSFELD LLP
4640 Admiralty Way, Suite 850
Marina del Rey, CA 90292
Facsimile: (310) 305-2116

RE: Sorensen Research & Development Trust v. Emerson Electric, et al
USDC Southern District of California, Case No. 08cv00060
Sorensen Research & Development Trust v. Ryobi Technologies, et al
USDC Southern District of California, Case No. 08cv00070
Sorensen Research & Development Trust v. Senco Products, Inc., et al
USDC Southern District of California, Case No. 08cv00071

Request for agreement to conduct limited discovery during stay for the purpose of preserving evidence

Dear Messrs. Mallin, Perkins and Cabanday:

In accordance with the Order for stay by Judge Moskowitz in the above cases, we are hereby requesting the Defendants' agreement to preserve certain items of evidence to ensure that they will not be lost during the time that this case is being stayed. If we are unable to reach an agreement, we will be asking the Court for an order to produce this evidence.

1. All prototype and production molds used in the production of the Accused Products that are currently in the possession or control of either Defendants or non-parties; and
2. All design and technical Documents for the Accused Product that are in the possession or control of either Defendants or non-parties.
3. Initial disclosures pursuant to Rule 26(a)(1), specifically including the identity and location of all manufacturers, suppliers, and importers for the products at issue.

The products at issue at this point include the following identified products, and any other products made with the same molds or similar manufacturing process:

Sorensen Research & Development Trust v. Emerson Electric, et al

Ridgid 18V Cordless Reciprocating Saw	Ridgid Heavy Duty VSR Drywall
Ridgid HD 3/8" VSR Drill	Screwdriver
Ridgid HD Reciprocating Saw	Ridgid Professional 3/8" VSR Drill
Ridgid 18V Cordless 1/2" Hammer Drill	Ridgid Heavy Duty 1/2" VSR Hammer
Ridgid 18V Cordless 1/2 " Drill	Drill
Ridgid 18V Cordless Drill	Ridgid Max Select Dual Voltage Jig Saw
Ridgid 14.4V Cordless 1/2" Drill	Ridgid Heavy Duty 1/2" VSR Drill
Ridgid 12V Right Angle Impact Driver	Ridgid 12 Volt Cordless 3/8" Drill
Ridgid 14.4V Impact Driver	Ridgid Max Select Dual Voltage
Ridgid 12V Cordless 3/8" Drill	Reciprocating Saw
Ridgid Heavy Duty 3 Speed 1/2" Right	Ridgid 18 Volt Compact Lithium – Ion
Angle Drill	Drill
Ridgid Heavy Duty 2 Speed 1/2" VSR Drill	Ridgid Max Select Dual Voltage Circular
Ridgid Heavy Duty VSR Drywall	Saw
Screwdriver	Ridgid 24 Volt Lithium-Ion Cordless
Ridgid Heavy Duty 1/2" VSR	Hammer Drill
Hammer/Pulse Drill	Ridgid Worklight
Ridgid 7 1/4" Worm Drive Saw	Ridgid 1/4 Sheet Sander
Ridgid Heavy Duty 7 1/4" Circular Saw	Ridgid 5" Random Orbit Sander
Ridgid 18V Cordless Jig Saw	Ridgid Max Select Hand Planer
Ridgid Variable Speed Orbital Jig Saw	Ridgid 6 1/2" Compact Framing Saw
Ridgid Heavy Duty 11A Reciprocating	Ridgid 12 Volt Right Angle Impact Driver
Saw	Ridgid 7" Circular Saw
Ridgid 18V Cordless Hand Planer	Ridgid 7 1/4" Worm Drive Circular Saw
Ridgid Heavy Duty Variable Speed Belt	Ridgid Variable Speed Orbital Jig Saw
Sander	Ridgid 1/2" Right Angle Drill
Ridgid 9.6V Pivoting Screwdriver	Ridgid Variable Speed Belt Sander
Ridgid 9.6V Pivoting Screwdriver	Ridgid Twist Handle Orbital
Ridgid Heavy Duty 1/2" Two Speed	Reciprocating Saw
Hammer Drill	Ridgid Heavy Duty 11Amp Reciprocating
	Saw

Ridgid 18 Volt Cordless Impact Driver
Ridgid 18 Volt Reciprocating Saw

Ridgid 18 Volt Circular Saw
Ridgid 18 Volt Cordless Hammer Drill

Sorensen Research & Development Trust v. Ryobi Technologies, et al

Ryobi 18.0V Circular Saw
Ryobi 13 AMP Circular Saw
Ryobi 14.4V Drill
Ryobi 18.0V Drill/Driver
Ryobi 14.4V Drill/Driver
Ryobi Hammer Drill

Ryobi 18" Electric Chainsaw
Ryobi One+ Lithium 18V Circular Saw
Ryobi One+ Lithium 18V Reciprocating
Saw
Ryobi One+ Lithium 18V Drill/Driver
Ryobi One+ Lithium 18V Flashlight

Sorensen Research & Development Trust v. Senco Products, Inc., et al
Senco Collated Screw Driver

It is our understanding that manufacturing of the Accused Products has been done in China by unidentified company or companies, not by the Defendants. As such, and because we are also aware of often complicated, sometimes international, chain of company ownership, there is simply no assurance that this necessary technical information will be available to my client once the stay is lifted. Furthermore, as we already pointed out to you, failure to identify manufacturers, suppliers, and importers will make it impossible for us to assure that all evidence is preserved.

Please advise us no later than May 27th if your clients are willing to stipulate to this limited discovery during the stay, otherwise we will file a motion with the Court.

Additionally, please advise us by May 27th if Defendants have any categories of evidence that they want to ensure are preserved. Although we are cognizant of our general obligation to preserve evidence, we are willing to work with you to ensure that any particular categories of evidence that you think may be necessary when stay is lifted, are adequately preserved.

Thank you for your attention to this matter.

Sincerely,

Melody A. Kramer

Robert S. Mallin
312-321-4221
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GILSON
& LIONE®

A Professional Corporation

Intellectual Property
Law Worldwide

May 27, 2008

*Via Facsimile Transmission to 858-824-9073
And U.S. First Class Mail*

Melody A. Kramer, Esq.
Kramer Law Office
9930 Mesa Rim Road
Suite 1600
San Diego, CA 92121

Re: **Sorensen v. Senco Products, Inc., et al.**
Case No. 08-CV-0071-BTM-CAB

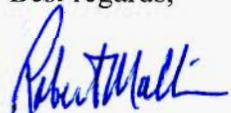
Dear Melody:

I write in response to your letter dated May 6, 2008. Please be advised that Senco Products Inc. will comply with its preservation requirements in accordance with the Federal Rules of Civil Procedure and applicable case law.

As for your offer to consider what categories of evidence to preserve, I assume that you will also abide by the requirements of the Federal Rules of Civil Procedure and applicable case law.

I trust that this letter resolves the issue. If you have any further concerns, feel free to contact me.

Best regards,



Robert S. Mallin

RSM:jms

cc: Roger G. Perkins, Esq.
Angela Kim, Esq.

EXHIBIT A - 7

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VIA FAX and
FEDERAL EXPRESS

June 3, 2008

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Facsimile: (312) 321-4299

RE: Sorensen Research & Development Trust v. Emerson Electric, et al
USDC Southern District of California, Case No. 08cv00060
Sorensen Research & Development Trust v. Ryobi Technologies, et al
USDC Southern District of California, Case No. 08cv00070
Sorensen Research & Development Trust v. Senco Products, Inc., et al
USDC Southern District of California, Case No. 08cv00071
Request for agreement to conduct limited discovery during stay for the purpose of
preserving evidence

Dear Mr. Mallin:

Thank you for your letters dated May 27th regarding the above-captioned cases and my request for preservation of evidence pending lift of stay in this case. I need to have some additional clarification to ensure that necessary evidence is being preserved.

We are aware from prior correspondence and investigation that all of the accused products in these cases are manufactured by companies that are not located in the United States and that are several levels of corporate structure away from the defendants in this case or by third-parties that are contracted by several levels of companies away. As such, assuring us that the named parties “will comply with their preservation requirements in accordance with the Federal Rules of Civil Procedure and applicable case law” really doesn’t mean anything.

Are all prototype and production molds used in the production of the Accused Products being preserved? Are all design and technical documents for the Accused Products being preserved?

Please clarify this matter for me no later than June 13th. If we do not receive adequate assurances of where this highly relevant evidence is being held and what steps are being taken to preserve it, we will have no choice but to proceed to the Court. Be advised that Judge Moskowitz has already heard one motion for exception to stay for preservation of evidence and did order certain discovery to proceed. A copy of that ruling is enclosed with this letter.

Sincerely,

Melody A. Kramer

enclosure

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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 JENS ERIK SORENSEN,

11 Plaintiff,

12 vs.

13 BLACK & DECKER CORPORATION,

14 Defendant.

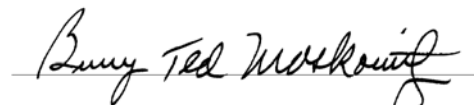
CASE NO. 06CV1572 BTM (CAB)

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
EXCEPTION TO STAY; GRANTING
IN PART AND DENYING IN PART
MOTION TO FILE DOCUMENTS
UNDER SEAL; AND GRANTING
REQUEST FOR ORAL ARGUMENT

15 For the reasons set forth on the record, the Court GRANTS IN PART AND DENIES
16 IN PART Plaintiff's motion for exception to stay [Doc. 264]. Plaintiff may take limited
17 depositions of the relevant entities as set forth on the record. Plaintiff may also attempt to
18 undertake an inspection of the out-of-district manufacturing facility through appropriate
19 procedural avenues. Plaintiff's request for discovery as to the alleged UK facility is denied
20 without prejudice. The Court also GRANTS IN PART AND DENIES IN PART Plaintiff's
21 motion to file documents under seal [Doc. 265, 271]. Defendants shall file a publicly available
22 version of the documents which the Court ruled should not be sealed within one week of the
23 date of this order. The request for oral argument is GRANTED [Doc. 266].

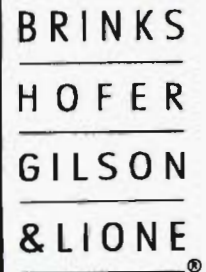
24 IT IS SO ORDERED.

25 DATED: June 3, 2008

26 

27 Honorable Barry Ted Moskowitz
28 United States District Judge

Robert S. Mallin
312-321-4221
rmallin@usebrinks.com



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Intellectual Property
Law Worldwide

June 6, 2008

*Via Facsimile Transmission to 858-824-9073
And U.S. First Class Mail*

Melody A. Kramer, Esq.
Kramer Law Office
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San Diego, CA 92121

Re: **Sorensen v. Senco Products, Inc., et al.**
Case No. 08-CV-0071-BTM-CAB

Dear Melody:

I write in response to your letter dated June 3, 2008. Before I can respond to the requests made in that June 3 letter, I need some clarification regarding what things and information you are seeking to have preserved. Indeed, if third parties are going to commit to preserve information and things, we need to have a clear understanding of what is included. Accordingly, please identify and explain to me what you mean by the phrases:

1. "All prototype and production molds used in the production of the Accused Products."
2. "All design and technical documents for the Accused Products".

I expect that your identification of information and things will be with specificity and your explanation will be clear and concise so that both we and any third parties will understand the scope of the request. After I receive your response, I will be in a better position to fully respond to your inquiry.

Best regards,

A handwritten signature in black ink, appearing to read "Robert S. Mallin".

Robert S. Mallin

RSM:jms

cc: Roger G. Perkins, Esq.
Angela Kim, Esq.

EXHIBIT A - 11